

770: 524

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1986



ENROLLED

Committee Substitute for
SENATE BILL NO. 524

(By Senator.....*Boettner*.....)



PASSED*March 8,*..... 1986

In Effect.....*90 days from*..... Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 524
(SENATOR BOETTNER, *original sponsor*)

[Passed March 8, 1986; in effect ninety days from passage.]

AN ACT to amend article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-two; to amend and reenact sections five and nine, article three, chapter seventeen-b of said code; to amend and reenact section three, article four of said chapter; to amend and reenact sections two and seven, article five, chapter seventeen-c of said code; and to amend and reenact sections one, two and three, article five-a of said chapter, all relating to drunk driving enforcement program; purpose; grounds for mandatory revocation of license by department; officers entitled to secure license; where fees to be deposited; increase of pickup fee; increased period of suspension for persons age sixteen through eighteen; driving while license suspended or revoked; increased criminal penalties for driving while license suspended or revoked for driving under the influence of alcohol or drugs or refusal to take secondary chemical tests or with an elevated blood alcohol level; driving under influence of alcohol, controlled substances or drugs; penalties; adding to the alternative forms of driving under the influence the offense of driving with an alcohol

blood level of ten hundredths of one percent or more, by weight; criminal penalties; permitting a second driving under the influence to be charged when charges of a prior offense are pending; refusal to submit to tests; revocation of license; consent not withdrawn if person arrested is incapable; hearing; hearing examiner; funding for hearing process; clarifying that an initial refusal to take a secondary test shall be deemed to be a final refusal; implied consent to administrative procedure; revocation for driving under the influence; refusal to submit to secondary chemical test; authorizing the confiscation of a driver's license by an arresting officer and the issuance and renewal upon hearing request of a temporary license; safety and treatment program; reissuance of license; certification of completion; limit on judicial stay of suspension.

Be it enacted by the Legislature of West Virginia:

That article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section forty-two; that sections five and nine, article three, chapter seventeen-b of said code be amended and reenacted; that section three, article four of said chapter be amended and reenacted; that sections two and seven, article five, chapter seventeen-c of said code be amended and reenacted; and that sections one, two and three, article five-a of said chapter be amended and reenacted, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-42. Drunk driving enforcement program established; purpose.

1 The superintendent of the department shall establish and
2 maintain a drunk driving enforcement program for the
3 purpose of enforcing drunk driving laws in the state,
4 especially the investigation and apprehension of persons
5 driving illegally on previously revoked or suspended
6 operators' licenses for drunk driving related offenses. The
7 superintendent shall develop a program in cooperation
8 with local law-enforcement agencies to accomplish this
9 purpose;

**CHAPTER 17B. MOTOR VEHICLE OPERATORS' AND
CHAUFFEURS' LICENSES.**

**ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF
LICENSES.**

**§17B-3-5. Grounds for mandatory revocation of license by
department.**

1 The department shall forthwith revoke the license of any
2 operator or chauffeur upon receiving a record of such
3 operator's or chauffeur's conviction of any of the following
4 offenses, when such conviction has become final: *Provided,*
5 That if the convicted driver had not reached his or her
6 nineteenth birthday at the time of the conduct for which the
7 license is revoked under this section, the license shall be
8 revoked until the driver's nineteenth birthday, or the
9 applicable statutory period of revocation, whichever is
10 longer:

11 (1) Manslaughter or negligent homicide resulting from
12 the operation of a motor vehicle;

13 (2) Any felony in the commission of which a motor
14 vehicle is used;

15 (3) Failure to stop and render aid as required under the
16 laws of this state in the event of involvement in a motor
17 vehicle accident resulting in the death or personal injury of
18 another;

19 (4) Perjury or the making of a false affidavit or
20 statement under oath to the department under this chapter
21 or under any other law relating to the ownership or
22 operation of motor vehicles;

23 (5) Conviction, or forfeiture of bail not vacated, upon
24 three charges of reckless driving committed within a period
25 of twenty-four months;

26 (6) Driving under the influence of alcohol, controlled
27 substances or other drugs outside the state of West Virginia
28 which conviction is under a municipal ordinance or statute
29 of the United States or any other state of an offense which
30 has the same elements as an offense described in section
31 two, article five, chapter seventeen-c of this code; and

32 (7) Nothing herein shall prohibit the department from
33 exercising its authority to revoke or suspend a person's
34 license to drive a motor vehicle in this state, as provided in
35 chapter seventeen-c of this code.

§17B-3-9. Surrender and return of license; willful refusal to return; additional fee for reinstatement.

1 The department, upon suspending or revoking a license
2 shall require that such license shall be surrendered to and
3 be retained by the department: *Provided*, That before such
4 license may be reinstated, the licensee shall pay a fee of
5 fifteen dollars, in addition to all other fees and charges,
6 which fee shall be collected by the department and
7 deposited in the state road fund to be appropriated to the
8 department for use in the enforcement of the provisions of
9 this section. If any person shall willfully fail to return to the
10 department such suspended or revoked license, the
11 commissioner shall secure possession thereof through the
12 department of public safety, a local law-enforcement
13 agency, or other lawful means and return same to the
14 department. Said superintendent of the department of
15 public safety or local law-enforcement agency shall make a
16 report in writing to the commissioner as to the result of his
17 efforts to secure the possession and return of such license.
18 For each license which shall have been suspended or
19 revoked and which the holder thereof shall have willfully
20 failed to return to the department within ten days from the
21 time that such suspension or revocation becomes effective
22 and which shall have been certified to the superintendent of
23 the department of public safety as aforesaid, the holder
24 thereof, before the same may be reinstated, in addition to all
25 other fees and charges, shall pay a fee of fifty dollars, which
26 shall be collected by the department of motor vehicles and
27 paid into the state treasury and credited to the general fund
28 to be appropriated to the department of public safety for
29 application in the enforcement of road laws.

ARTICLE 4. VIOLATION OF LICENSE PROVISIONS.

§17B-4-3. Driving while license suspended or revoked; driving while license revoked for driving under the influence of alcohol, controlled substances or drugs, or while having alcoholic concentration in the blood of ten hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol contents.

1 (a) Except as otherwise provided in subsection (b) of

2 this section, any person who drives a motor vehicle on any
3 public highway of this state at a time when his privilege so
4 to do has been lawfully suspended or revoked shall, for the
5 first offense, be guilty of a misdemeanor, and, upon
6 conviction thereof, shall be imprisoned in the county jail for
7 forty-eight hours and, in addition to such mandatory jail
8 sentence, shall be fined not less than fifty dollars nor more
9 than five hundred dollars; for the second offense, such
10 person shall be guilty of a misdemeanor, and, upon
11 conviction thereof, shall be punished by imprisonment in
12 the county jail for a period of ten days and, in addition to
13 such mandatory jail sentence, shall be fined not less than
14 one hundred dollars nor more than five hundred dollars; for
15 the third or any subsequent offense, such person shall be
16 guilty of a misdemeanor, and, upon conviction thereof, shall
17 be imprisoned in the county jail for six months and, in
18 addition to such mandatory jail sentence, shall be fined not
19 less than one hundred fifty dollars nor more than five
20 hundred dollars.

21 (b) Any person who drives a motor vehicle on any public
22 highway of this state at a time when his privilege so to do
23 has been lawfully revoked for driving under the influence of
24 alcohol, controlled substances or other drugs, or while
25 having an alcoholic concentration in his blood of ten
26 hundredths of one percent or more, by weight, or for
27 refusing to take a secondary chemical test of blood alcohol
28 content shall, for the first offense, be guilty of a
29 misdemeanor, and, upon conviction thereof, shall be
30 imprisoned in the county jail for six months and in addition
31 to such mandatory jail sentence, shall be fined not less than
32 one hundred dollars nor more than five hundred dollars; for
33 the second offense, such person shall be guilty of a
34 misdemeanor, and, upon conviction thereof, shall be
35 punished by imprisonment in the county jail for a period of
36 one year and, in addition to such mandatory jail sentence,
37 shall be fined not less than one thousand dollars nor more
38 than three thousand dollars; for the third or any subsequent
39 offense, such person shall be guilty of a felony, and, upon
40 conviction thereof, shall be imprisoned in the penitentiary
41 for not less than one year nor more than three years and, in
42 addition to such mandatory jail sentence, shall be fined not
43 less than three thousand dollars nor more than five
44 thousand dollars.

45 (c) The department upon receiving a record of the
46 conviction of any person under this section upon a charge of
47 driving a vehicle while the license of such person was
48 lawfully revoked shall extend the period of such suspension
49 for an additional like period and if the conviction was upon
50 a charge of driving while a license was revoked lawfully the
51 department shall not issue a new license for an additional
52 period of one year from and after the date such person
53 would otherwise have been entitled to apply for a new
54 license.

**CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF
THE ROAD.**

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

**§17C-5-2. Driving under influence of alcohol, controlled
substances or drugs; penalties.**

- 1 (a) Any person who:
2 (1) Drives a vehicle in this state while:
3 (A) He is under the influence of alcohol, or
4 (B) He is under the influence of any controlled
5 substance, or
6 (C) He is under the influence of any other drug, or
7 (D) He is under the combined influence of alcohol and
8 any controlled substance or any other drug, or
9 (E) He has an alcohol concentration in his blood of ten
10 hundredths of one percent or more, by weight; and
11 (2) When so driving does any act forbidden by law or
12 fails to perform any duty imposed by law in the driving of
13 such vehicle, which act or failure proximately causes the
14 death of any person within one year next following such act
15 or failure; and
16 (3) Commits such act or failure in reckless disregard of
17 the safety of others, and when the influence of alcohol,
18 controlled substances or drugs is shown to be a contributing
19 cause to such death, shall be guilty of a felony, and, upon
20 conviction thereof, shall be imprisoned in the penitentiary
21 for not less than one nor more than ten years and shall be
22 fined not less than one thousand dollars nor more than three
23 thousand dollars.
24 (b) Any person who:
25 (1) Drives a vehicle in this state while:
26 (A) He is under the influence of alcohol, or

27 (B) He is under the influence of any controlled
28 substance, or

29 (C) He is under the influence of any other drug, or

30 (D) He is under the combined influence of alcohol and
31 any controlled substance or any other drug, or

32 (E) He has an alcohol concentration in his blood of ten
33 hundredths of one percent or more, by weight; and

34 (2) When so driving does any act forbidden by law or
35 fails to perform any duty imposed by law in the driving of
36 such vehicle, which act or failure proximately causes the
37 death of any person within one year next following such act
38 or failure, shall be guilty of a misdemeanor, and, upon
39 conviction thereof, shall be imprisoned in the county jail for
40 not less than ninety days nor more than one year and shall
41 be fined not less than five hundred dollars nor more than
42 one thousand dollars.

43 (c) Any person who:

44 (1) Drives a vehicle in this state while:

45 (A) He is under the influence of alcohol, or

46 (B) He is under the influence of any controlled
47 substance, or

48 (C) He is under the influence of any other drug, or

49 (D) He is under the combined influence of alcohol and
50 any controlled substance or any other drug, or

51 (E) He has an alcohol concentration in his blood of ten
52 hundredths of one percent or more, by weight; and

53 (2) When so driving does any act forbidden by law or
54 fails to perform any duty imposed by law in the driving of
55 such vehicle, which act or failure proximately causes bodily
56 injury to any person other than himself, shall be guilty of a
57 misdemeanor, and, upon conviction thereof, shall be
58 imprisoned in the county jail for not less than one day nor
59 more than one year, which jail term shall include actual
60 confinement of not less than twenty-four hours, and shall
61 be fined not less than two hundred dollars nor more than
62 one thousand dollars.

63 (d) Any person who:

64 (1) Drives a vehicle in this state while:

65 (A) He is under the influence of alcohol, or

66 (B) He is under the influence of any controlled
67 substance, or

68 (C) He is under the influence of any other drug, or

69 (D) He is under the combined influence of alcohol and
70 any controlled substance or any other drug, or

71 (E) He has an alcohol concentration in his blood of ten
72 hundredths of one percent or more, by weight; and

73 (2) Shall be guilty of a misdemeanor, and, upon
74 conviction thereof, shall be imprisoned in the county jail for
75 not less than one day nor more than six months, which jail
76 term shall include actual confinement of not less than
77 twenty-four hours, and shall be fined not less than one
78 hundred dollars nor more than five hundred dollars.

79 (e) Any person who, being an habitual user of narcotic
80 drugs or amphetamine or any derivative thereof, drives a
81 vehicle in this state, shall be guilty of a misdemeanor, and,
82 upon conviction thereof, shall be imprisoned in the county
83 jail for not less than one day nor more than six months,
84 which jail term shall include actual confinement of not less
85 than twenty-four hours, and shall be fined not less than one
86 hundred dollars nor more than five hundred dollars.

87 (f) Any person who:

88 (1) Knowingly permits his vehicle to be driven in this
89 state by any other person who is:

90 (A) Under the influence of alcohol, or

91 (B) Under the influence of any controlled substance, or

92 (C) Under the influence of any other drug, or

93 (D) Under the combined influence of alcohol and any
94 controlled substance or any other drug, or

95 (E) Has an alcohol concentration in his blood of ten
96 hundredths of one percent or more, by weight; and

97 (2) Shall be guilty of a misdemeanor, and, upon
98 conviction thereof, shall be imprisoned in the county jail for
99 not more than six months and shall be fined not less than
100 one hundred dollars nor more than five hundred dollars.

101 (g) Any person who:

102 Knowingly permits his vehicle to be driven in this state by
103 any other person who is an habitual user of narcotic drugs
104 or amphetamine or any derivative thereof, shall be guilty of
105 a misdemeanor, and, upon conviction thereof, shall be
106 imprisoned in the county jail for not more than six months
107 and shall be fined not less than one hundred dollars nor
108 more than five hundred dollars.

109 (h) A person violating any provision of subsection (b),
110 (c), (d), (e), (f) or (g) of this section shall, for the second

111 offense under this section, be guilty of a misdemeanor, and,
112 upon conviction thereof, shall be imprisoned in the county
113 jail for a period of not less than six months nor more than
114 one year, and the court may, in its discretion, impose a fine
115 of not less than one thousand dollars nor more than three
116 thousand dollars.

117 (i) A person violating any provision of subsection (b),
118 (c), (d), (e), (f) or (g) of this section shall, for the third or any
119 subsequent offense under this section, be guilty of a felony,
120 and, upon conviction thereof, shall be imprisoned in the
121 penitentiary for not less than one nor more than three years,
122 and the court may, in its discretion, impose a fine of not less
123 than three thousand dollars nor more than five thousand
124 dollars.

125 (j) For purposes of subsections (h) and (i) of this section
126 relating to second, third and subsequent offenses, the
127 following types of convictions shall be regarded as
128 convictions under this section:

129 (1) Any conviction under the provisions of subsection
130 (a), (b), (c), (d), (e) or (f) of the prior enactment of this section
131 for an offense which occurred on or after the first day of
132 September, one thousand nine hundred eighty-one, and
133 prior to the effective date of this section;

134 (2) Any conviction under the provisions of subsection
135 (a) or (b) of the prior enactment of this section for an offense
136 which occurred within a period of five years immediately
137 preceding the first day of September, one thousand nine
138 hundred eighty-one;

139 (3) Any conviction under a municipal ordinance of this
140 state or any other state or a statute of the United States or of
141 any other state of an offense which has the same elements as
142 an offense described in this section, which offense occurred
143 after the June tenth, one thousand nine hundred eighty-
144 three; and

145 (4) A person may be charged in a warrant or indictment
146 or information for a second or subsequent offense under
147 this section, if the person has been previously arrested for or
148 charged with a violation of this section which is alleged to
149 have occurred within the applicable time periods for prior
150 offenses, notwithstanding the fact that there has not been a
151 final adjudication of the charges for the alleged previous
152 offense. In such case, the warrant or indictment or
153 information must set forth the date, location and

154 particulars of the previous offense or offenses. No person
155 may be convicted of a second or subsequent offense under
156 this section unless the conviction for the previous offense
157 has become final.

158 (k) The fact that any person charged with a violation of
159 subsection (a), (b), (c), (d) or (e) of this section, or any person
160 permitted to drive as described under subsection (f) or (g) of
161 this section, is or has been legally entitled to use alcohol, a
162 controlled substance or a drug shall not constitute a defense
163 against any charge of violating subsection (a), (b), (c), (d),
164 (e), (f) or (g) of this section.

165 (l) For purposes of this section, the term "controlled
166 substance" shall have the meaning ascribed to it in chapter
167 sixty-a of this code.

168 (m) The sentences provided herein upon conviction for a
169 violation of this article are mandatory and shall not be
170 subject to suspension or probation: *Provided*, That the
171 court may apply the provisions of article eleven-a, chapter
172 sixty-two of this code to a person sentenced or committed to
173 a term of one year or less.

174 (n) The reenactment of this section in the regular session
175 of the Legislature during the year one thousand nine
176 hundred eighty-three, shall not in any way add to or
177 subtract from the elements of the offenses set forth herein
178 and earlier defined in the prior enactment of this section.

**§17C-5-7. Refusal to submit to tests; revocation of license or
privilege; consent not withdrawn if person
arrested is incapable of refusal; hearing.**

1 (a) If any person under arrest as specified in section four
2 of this article refuses to submit to any secondary chemical
3 test, the tests shall not be given: *Provided*, That prior to
4 such refusal, the person is given a written statement
5 advising him that his refusal to submit to the secondary test
6 finally designated will result in the revocation of his license
7 to operate a motor vehicle in this state for a period of at least
8 one year and up to life. If a person initially refuses to submit
9 to the designated secondary chemical test after being
10 informed in writing of the consequences of such refusal, he
11 shall be informed orally and in writing that after fifteen
12 minutes said refusal shall be deemed to be final and the
13 arresting officer shall after said period of time expires have

14 no further duty to provide the person with an opportunity to
15 take the secondary test. The officer shall within forty-eight
16 hours of such refusal, sign and submit to the commissioner
17 of motor vehicles a written statement of the officer that (1)
18 he had reasonable grounds to believe such person had been
19 driving a motor vehicle in this state while under the
20 influence of alcohol, controlled substances or drugs; (2)
21 such person was lawfully placed under arrest for an offense
22 relating to driving a motor vehicle in this state while under
23 the influence of alcohol, controlled substances or drugs; (3)
24 such person refused to submit to the secondary chemical
25 test finally designated in the manner provided in section
26 four of this article; and (4) such person was given a written
27 statement advising him that his license to operate a motor
28 vehicle in this state would be revoked for a period of at least
29 one year and up to life if he refused to submit to the
30 secondary test finally designated in the manner provided in
31 section four of this article. The signing of the statement
32 required to be signed by this section shall constitute an oath
33 or affirmation by the person signing such statement that the
34 statements contained therein are true and that any copy
35 filed is a true copy. Such statement shall contain upon its
36 face a warning to the officer signing that to willfully sign a
37 statement containing false information concerning any
38 matter or thing, material, or not material, is false swearing
39 and is a misdemeanor. Upon receiving the statement the
40 commissioner shall make and enter an order revoking such
41 person's license to operate a motor vehicle in this state for
42 the period prescribed by this section.

43 For the first refusal to submit to the designated secondary
44 chemical test, the commissioner shall make and enter an
45 order revoking such person's license to operate a motor
46 vehicle in this state for a period of one year. If the
47 commissioner has previously revoked the person's license
48 under the provisions of this section, the commissioner shall,
49 for the refusal to submit to the designated secondary
50 chemical test, make and enter an order revoking such
51 person's license to operate a motor vehicle in this state for a
52 period of ten years: *Provided*, That the license may be
53 reissued in five years in accordance with the provisions of
54 section three, article five-a of this chapter. If the
55 commissioner has previously revoked the person's license

56 more than once under the provisions of this section, the
57 commissioner shall, for the refusal to submit to the
58 designated secondary chemical test, make and enter an
59 order revoking such person's license to operate a motor
60 vehicle in this state for a period of life: *Provided*, That the
61 license may be reissued in ten years in accordance with the
62 provisions of section three, article five-a of this chapter. A
63 copy of each such order shall be forwarded to such person
64 by registered or certified mail, return receipt requested, and
65 shall contain the reasons for the revocation and shall
66 specify the revocation period imposed pursuant to this
67 section. No such revocation shall become effective until ten
68 days after receipt of the copy of such order. Any person who
69 is unconscious or who is otherwise in a condition rendering
70 him incapable of refusal, shall be deemed not to have
71 withdrawn his consent for a test of his blood, breath or
72 urine as provided in section four of this article and the test
73 may be administered although such person is not informed
74 that his failure to submit to the test will result in the
75 revocation of his license to operate a motor vehicle in this
76 state for the period provided for in this section.

77 A revocation hereunder shall run concurrently with the
78 period of any suspension or revocation imposed in
79 accordance with other provisions of this code and growing
80 out of the same incident which gave rise to the arrest for
81 driving a motor vehicle while under the influence of
82 alcohol, controlled substances or drugs and the subsequent
83 refusal to undergo the test finally designated in accordance
84 with the provisions of section four of this article.

85 (b) For the purposes of this section, where reference is
86 made to previous suspensions or revocations under this
87 section, the following types of suspensions or revocations
88 shall also be regarded as suspensions or revocations under
89 this section:

90 (1) Any suspension or revocation on the basis of a
91 conviction under a municipal ordinance of another state or
92 a statute of the United States or of any other state of an
93 offense which has the same elements as an offense described
94 in section two of this article, for conduct which occurred on
95 or after June tenth, one thousand nine hundred eighty-
96 three; and

97 (2) Any revocation under the provisions of section one

98 or two, article five-a of this chapter, for conduct which
99 occurred on or after June tenth, one thousand nine hundred
100 eighty-three.

101 (c) A person whose license to operate a motor vehicle in
102 this state has been revoked shall be afforded an opportunity
103 to be heard, in accordance with the provisions of section
104 two, article five-a of this chapter.

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION
AND REVOCATION OF LICENSES FOR DRIVING
UNDER THE INFLUENCE OF ALCOHOL,
CONTROLLED SUBSTANCES OR DRUGS.**

**§17C-5A-1. Implied consent to administrative procedure;
revocation for driving under the influence of
alcohol, controlled substances or refusal to
submit to secondary chemical test.**

1 (a) Any person who is licensed to operate a motor
2 vehicle in this state and who drives a motor vehicle in this
3 state shall be deemed to have given his consent by the
4 operation thereof, subject to the provisions of this article, to
5 the procedure set forth in this article for the determination
6 of whether his license to operate a motor vehicle in this state
7 should be revoked because he did drive a motor vehicle
8 while under the influence of alcohol, controlled substances
9 or drugs, or combined influence of alcohol or controlled
10 substances or drugs, or did drive a motor vehicle while
11 having an alcoholic concentration in his blood of ten
12 hundredths of one percent or more, by weight, or did refuse
13 to submit to any designated secondary chemical test.

14 (b) Any law-enforcement officer arresting a person for
15 an offense described in section two, article five of this
16 chapter or for an offense described in a municipal
17 ordinance which has the same elements as an offense
18 described in said section two of article five, shall take the
19 person's license at the time of arrest and issue a temporary
20 license, to be prescribed by the department of motor
21 vehicles, pending a request for an administrative hearing,
22 and shall report to the commissioner of the department of
23 motor vehicles by written statement within forty-eight
24 hours the name and address of the person so arrested. Such
25 report shall include the specific offense with which the
26 person is charged, and, if applicable, a copy of the results of

27 any secondary tests of blood, breath or urine. The signing of
28 the statement required to be signed by this subsection shall
29 constitute an oath or affirmation by the person signing such
30 statement that the statements contained therein are true
31 and that any copy filed is a true copy. Such statement shall
32 contain upon its face a warning to the officer signing that to
33 willfully sign a statement containing false information
34 concerning any matter or thing, material or not material, is
35 false swearing and is a misdemeanor.

36 (c) If, upon examination of the written statement of the
37 officer and the tests results described in subsection (b) of
38 this section, the commissioner shall determine that a person
39 was arrested for an offense described in section two, article
40 five of this chapter or for an offense described in a
41 municipal ordinance which has the same elements as an
42 offense described in said section two of article five, and that
43 the results of the tests indicate that at the time the test or
44 tests were administered the person had, in his blood, an
45 alcohol concentration of ten hundredths of one percent or
46 more, by weight, or at the time the person was arrested he
47 was under the influence of alcohol, controlled substances or
48 drugs, the commissioner shall make and enter an order
49 revoking such person's license to operate a motor vehicle in
50 this state. A copy of such order shall be forwarded to such
51 person by registered or certified mail, return receipt
52 requested, and shall contain the reasons for the revocation
53 and the revocation periods provided for in section two of
54 this article. No revocation shall become effective until ten
55 days after receipt of a copy of such order.

§17C-5A-2. Hearing; revocation; review.

1 (a) Upon the written request of a person whose license
2 to operate a motor vehicle in this state has been revoked
3 under the provisions of section one of this article or section
4 seven, article five of this chapter, the commissioner of
5 motor vehicles shall extend the temporary license issued
6 under section one of this article, if applicable, and afford
7 the person an opportunity to be heard. Such written request
8 must be filed with the commissioner in person or by
9 registered or certified mail, return receipt requested, within
10 ten days after receipt of a copy of the order of revocation.
11 The hearing shall be before said commissioner or a hearing

12 examiner retained by the commissioner who shall rule on
13 evidentiary issues and submit proposed findings of fact and
14 conclusions of law for the consideration of said
15 commissioner and all of the pertinent provisions of article
16 five, chapter twenty-nine-a of this code shall apply:
17 *Provided*, That in the case of a resident of this state the
18 hearing shall be held in the county wherein the arrest was
19 made in this state unless the commissioner or his authorized
20 deputy or agent and such person agree that the hearing may
21 be held in some other county.

22 (b) Any such hearing shall be held within twenty days
23 after the date upon which the commissioner received the
24 timely written request therefor, unless there is a
25 postponement or continuance. The commissioner may
26 postpone or continue any hearing on his own motion, or
27 upon application for each person for good causes shown. The
28 commissioner shall adopt and implement by a procedural
29 rule written policies governing the postponement or
30 continuance of any such hearing on his own motion or for
31 the benefit of any law-enforcement officer or any person
32 requesting such hearing, and such policies shall be enforced
33 and applied to all parties equally. For the purpose of
34 conducting such hearing, the commissioner shall have the
35 power and authority to issue subpoenas and subpoenas
36 duces tecum in accordance with the provisions of section
37 one, article five, chapter twenty-nine-a of this code:
38 *Provided*, That the notice of hearing to the appropriate
39 law-enforcement officers by registered or certified mail,
40 return receipt requested, shall constitute a subpoena to
41 appear at such hearing without the necessity of payment of
42 fees by the department of motor vehicles. All subpoenas and
43 subpoenas duces tecum shall be issued and served within
44 the time and for the fees and shall be enforced, as specified
45 in section one, article five of said chapter twenty-nine-a,
46 and all of the said section one provisions dealing with
47 subpoenas and subpoenas duces tecum shall apply to
48 subpoenas and subpoenas duces tecum issued for the
49 purpose of a hearing hereunder.

50 (c) Law-enforcement officers shall be compensated for
51 the time expended in their travel and appearance before the
52 commissioner by the law-enforcement agency by whom
53 they are employed at their regular rate if they are scheduled

54 to be on duty during said time or at their regular overtime
55 rate if they are scheduled to be off-duty during said time.

56 (d) The principal question at such hearing shall be
57 whether the person did drive a motor vehicle while under
58 the influence of alcohol, controlled substances or drugs, or
59 did drive a motor vehicle while having an alcohol
60 concentration in his blood of ten hundredths of one percent
61 or more, by weight, or did refuse to submit to the designated
62 secondary chemical test.

63 The commissioner may propose a legislative rule in
64 compliance with the provisions of article three, chapter
65 twenty-nine-a of this code, which rule may provide that if a
66 person accused of driving a motor vehicle while under the
67 influence of alcohol, controlled substances or drugs, or
68 accused of driving a motor vehicle while having an alcohol
69 concentration in his blood of ten hundredths of one percent
70 or more, by weight, intends to challenge the results of any
71 secondary chemical test of blood, breath or urine, or intends
72 to cross-examine the individual or individuals who
73 administered the test or performed the chemical analysis,
74 he shall, within an appropriate period of time prior to the
75 hearing, notify the commissioner in writing of such
76 intention. Such rule may provide that when there is a
77 failure to comply with the notice requirement, the results of
78 the secondary test, if any, shall be admissible as though the
79 person and the commissioner had stipulated the
80 admissibility of such evidence. Any such rule shall provide
81 that the rule shall not be invoked in the case of a person who
82 is not represented by counsel unless the communication
83 from the commissioner to the person establishing a time and
84 place for the hearing also informed the person of the
85 consequences of his failure to timely notify the
86 commissioner of his intention to challenge the results of the
87 secondary chemical test or cross-examine the individual or
88 individuals who administered the test or performed the
89 chemical analysis.

90 (e) In the case of a hearing wherein a person is accused
91 of driving a motor vehicle while under the influence of
92 alcohol, controlled substances or drugs, or accused of
93 driving a motor vehicle while having an alcoholic
94 concentration in his blood of ten hundredths of one percent
95 or more, by weight, the commissioner shall make specific

96 findings as to (1) whether the arresting law-enforcement
97 officer had reasonable grounds to believe such person to
98 have been driving while under the influence of alcohol,
99 controlled substances or drugs, or while having an alcoholic
100 concentration in his blood of ten hundredths of one percent
101 or more, by weight, (2) whether such person was lawfully
102 placed under arrest for an offense involving driving under
103 the influence of alcohol, controlled substances or drugs, and
104 (3) whether the tests, if any, were administered in
105 accordance with the provisions of this article and article
106 five of this chapter.

107 (f) If, in addition to a finding that the person did drive a
108 motor vehicle while under the influence of alcohol,
109 controlled substances or drugs, or did drive a motor vehicle
110 while having an alcoholic concentration in his blood of ten
111 hundredths of one percent or more, by weight, the
112 commissioner also finds by a preponderance of the evidence
113 that the person when so driving did an act forbidden by law
114 or failed to perform a duty imposed by law, which act or
115 failure proximately caused the death of a person and was
116 committed in reckless disregard of the safety of others, and,
117 if the commissioner further finds that the influence of
118 alcohol, controlled substances or drugs or the alcoholic
119 concentration in the blood was a contributing cause to the
120 death, the commissioner shall revoke the person's license
121 for a period of ten years: *Provided*, That if the commissioner
122 has previously suspended or revoked the person's license
123 under the provisions of this section or section one of this
124 article, the period of revocation shall be for the life of such
125 person.

126 (g) If, in addition to a finding that the person did drive a
127 motor vehicle while under the influence of alcohol,
128 controlled substances or drugs, or did drive a motor vehicle
129 while having an alcoholic concentration in his blood of ten
130 hundredths of one percent or more, by weight, the
131 commissioner also finds by a preponderance of the evidence
132 that the person when so driving did an act forbidden by law
133 or failed to perform a duty imposed by law, which act or
134 failure proximately caused the death of a person, the
135 commissioner shall revoke the person's license for a period
136 of five years: *Provided*, That if the commissioner has
137 previously suspended or revoked a person's license under

138 the provisions of this section or section one of this article,
139 the period of revocation shall be for the life of such person.

140 (h) If, in addition to a finding that the person did drive a
141 motor vehicle while under the influence of alcohol,
142 controlled substances or drugs, or did drive a motor vehicle
143 while having an alcoholic concentration in his blood of ten
144 hundredths of one percent or more, by weight, the
145 commissioner also finds by a preponderance of the evidence
146 that the person when so driving did an act forbidden by law
147 or failed to perform a duty imposed by law, which act or
148 failure proximately caused bodily injury to a person other
149 than himself, the commissioner shall revoke the person's
150 license for a period of two years: *Provided*, That if the
151 commissioner has previously suspended or revoked the
152 person's license under the provisions of this section or
153 section one of this article, the period of revocation shall be
154 ten years: *Provided, however*, That if the commissioner has
155 previously suspended or revoked the person's license more
156 than once under the provisions of this section or section one
157 of this article, the period of revocation shall be for the life of
158 such person.

159 (i) If the commissioner finds by a preponderance of the
160 evidence that the person did drive a motor vehicle while
161 under the influence of alcohol, controlled substances or
162 drugs, or did drive a motor vehicle while having an
163 alcoholic concentration in his blood of ten hundredths of
164 one percent or more, by weight, or finds that the person,
165 being an habitual user of narcotic drugs or amphetamine or
166 any derivative thereof, did drive a motor vehicle, or finds
167 that the person knowingly permitted his vehicle to be
168 driven by another person who was under the influence of
169 alcohol, controlled substances or drugs, or knowingly
170 permitted his vehicle to be driven by a person who had an
171 alcoholic concentration in his blood of ten hundredths of
172 one percent or more, by weight, the commissioner shall
173 revoke the person's license for a period of six months:
174 *Provided*, That if the commissioner has previously
175 suspended or revoked the person's license under the
176 provisions of this section or section one of this article, the
177 period of revocation shall be ten years: *Provided, however*,
178 That if the commissioner has previously suspended or
179 revoked the person's license more than once under the

180 provisions of this section or section one of this article, the
181 period of revocation shall be for the life of such person.

182 (j) For purposes of this section, where reference is made
183 to previous suspensions or revocations under this section,
184 the following types of criminal convictions or
185 administrative suspensions or revocations shall also be
186 regarded as suspensions or revocations under this section or
187 section one of this article:

188 (1) Any administrative revocation under the provisions
189 of the prior enactment of this section for conduct which
190 occurred on or after the first day of September, one
191 thousand nine hundred eighty-one, and prior to the
192 effective date of this section;

193 (2) Any conviction under the provisions of a prior
194 enactment of section two, article five of this chapter for
195 conduct which occurred within a period of five years
196 immediately preceding the first day of September, one
197 thousand nine hundred eighty-one;

198 (3) Any suspension or revocation on the basis of a
199 conviction under a municipal ordinance of another state or
200 a statute of the United States or of any other state of an
201 offense which has the same elements as an offense described
202 in section two, article five of this chapter, for conduct which
203 occurred on or after June tenth, one thousand nine hundred
204 eighty-three;

205 (4) Any suspension or revocation on the basis of a
206 conviction under a statute of the United States or of any
207 other state of an offense which has the same elements as an
208 offense described in section two, article five of this chapter,
209 or a prior enactment of said section, for conduct which
210 occurred within a period of five years immediately
211 preceding the first day of September, one thousand nine
212 hundred eighty-one;

213 (5) Any revocation under the provisions of section
214 seven, article five of this chapter, for conduct which
215 occurred on or after June tenth, one thousand nine hundred
216 eighty-three.

217 (k) In the case of a hearing wherein a person is accused
218 of refusing to submit to a designated secondary test, the
219 commissioner shall make specific findings as to (1) whether
220 the arresting law-enforcement officer had reasonable
221 grounds to believe such person had been driving a motor

222 vehicle in this state while under the influence of alcohol,
223 controlled substances or drugs, (2) whether such person was
224 lawfully placed under arrest for an offense relating to
225 driving a motor vehicle in this state while under the
226 influence of alcohol, controlled substances or drugs, (3)
227 whether such person refused to submit to the secondary test
228 finally designated in the manner provided in section four of
229 this article, and (4) whether such person had been given a
230 written statement advising him that his license to operate a
231 motor vehicle in this state would be revoked for at least one
232 year and up to life if he refused to submit to the test finally
233 designated in the manner provided in section four, article
234 five of this chapter.

235 (l) If the commissioner finds by a preponderance of the
236 evidence that (1) the arresting law-enforcement officer had
237 reasonable grounds to believe such person had been driving
238 a motor vehicle in this state while under the influence of
239 alcohol, controlled substances or drugs, (2) such person was
240 lawfully placed under arrest for an offense relating to
241 driving a motor vehicle in this state while under the
242 influence of alcohol, controlled substances or drugs, (3)
243 such person refused to submit to the secondary chemical
244 test finally designated, and (4) such person had been given a
245 written statement advising him that his license to operate a
246 motor vehicle in this state would be revoked for a period of
247 at least one year and up to life if he refused to submit to the
248 test finally designated, the commissioner shall revoke the
249 person's license to operate a motor vehicle in this state for
250 the periods specified in section seven, article five of this
251 chapter.

252 (m) If the commissioner finds to the contrary with
253 respect to the above issues, he shall rescind his earlier order
254 of revocation or shall reduce the order of revocation to the
255 appropriate period of revocation under this section, or
256 section seven, article five of this chapter.

257 A copy of the commissioner's order made and entered
258 following the hearing shall be served upon such person by
259 registered or certified mail, return receipt requested.
260 During the pendency of any such hearing, the revocation of
261 the person's license to operate a motor vehicle in this state
262 shall be stayed.

263 If the commissioner shall after hearing make and enter an

264 order affirming his earlier order of revocation such person
265 shall be entitled to judicial review as set forth in chapter
266 twenty-nine-a of this code, except that the commissioner
267 shall not stay enforcement of the order; and, pending such
268 appeal, the court may grant a stay or supersedeas of such
269 order only upon motion and hearing, and a finding by the
270 court upon evidence presented, that there is a substantial
271 probability that the appellant shall prevail upon the merits,
272 and the appellant will suffer irreparable harm if such order
273 is not stayed: *Provided*, That in no event shall the stay or
274 supersedeas of such order exceed thirty days.

275 (n) In any revocation pursuant to this section, if the
276 driver whose license is revoked had not reached his or her
277 nineteenth birthday at the time of the conduct for which the
278 license is revoked, the driver's license shall be revoked until
279 the driver's nineteenth birthday, or the applicable statutory
280 period of revocation prescribed by this section, whichever is
281 longer.

282 (o) Funds for this section's hearing and appeal process
283 may be provided from the drunk driving prevention fund, as
284 created by section sixteen, article fifteen, chapter eleven of
285 this code, upon application for such funds to the
286 commission on drunk driving prevention.

§17C-5A-3. Safety and treatment program; reissuance of license.

1 (a) The department of motor vehicles, in cooperation
2 with the department of health, the division of alcoholism
3 and drug abuse, shall establish by rule and regulation a
4 comprehensive safety and treatment program for persons
5 whose licenses have been revoked under the provision of
6 this article, or section seven, article five of this chapter, or
7 subsection (6), section three, article five, chapter seventeen-
8 b of this code, and shall likewise establish the minimum
9 qualifications for persons conducting the safety and
10 treatment program. The program shall include, but not be
11 limited to, treatment of alcoholism, alcohol and drug abuse,
12 psychological counseling, educational courses on the
13 dangers of alcohol and drugs as they relate to driving,
14 defensive driving, or other safety driving instruction, and
15 other programs designed to properly educate, train and
16 rehabilitate the offender.

17 (b) (1) The department of motor vehicles, in

18 cooperation with the department of health, the division of
19 alcoholism and drug abuse, shall provide for the
20 preparation of an educational and treatment program for
21 each person whose license has been revoked under the
22 provisions of this article or section seven, article five of this
23 chapter, or subsection (6), section five, article three, chapter
24 seventeen-b of this code, which shall contain the following:
25 (A) A listing and evaluation of the offender's prior traffic
26 record; (B) characteristics and history of alcohol or drug
27 use, if any; (C) his amenability to rehabilitation through the
28 alcohol safety program; and (D) a recommendation as to
29 treatment or rehabilitation, and the terms and conditions of
30 such treatment or rehabilitation. The program shall be
31 prepared by persons knowledgeable in the diagnosis of
32 alcohol or drug abuse and treatment. The cost of the
33 program shall be paid out of fees established by the
34 commissioner of motor vehicles in cooperation with the
35 department of health, division of alcohol and drug abuse.
36 These fees shall be deposited in a special account
37 administering the program, to be designated the "driver's
38 rehabilitation fund."

39 (2) The commissioner, after giving due consideration to
40 the program developed for the offender, shall prescribe the
41 necessary terms and conditions for the reissuance of the
42 license to operate a motor vehicle in this state revoked
43 under this article, or section seven, article five of this
44 chapter, or subsection (6), section five, article three, chapter
45 seventeen-b of this code, which shall include successful
46 completion of the educational, treatment or rehabilitation
47 program, subject to the following:

48 (A) When the period of revocation is six months, the
49 license to operate a motor vehicle in this state shall not be
50 reissued until (i) at least ninety days have elapsed from the
51 date of the initial revocation during which time the
52 revocation was actually in effect, (ii) the offender has
53 successfully completed the program, (iii) all costs of the
54 program and administration have been paid, and (iv) all
55 costs assessed as a result of a revocation hearing have been
56 paid.

57 (B) When the period of revocation is for a period of
58 years, the license to operate a motor vehicle in this state
59 shall not be reissued until (i) at least one half of such time

60 period has elapsed from the date of the initial revocation
61 during which time the revocation was actually in effect, (ii)
62 the offender has successfully completed the program, (iii)
63 all costs of the program and administration have been paid,
64 and (iv) all costs assessed as a result of a revocation hearing
65 have been paid.

66 (C) When the period of revocation is for life, the license
67 to operate a motor vehicle in this state shall not be reissued
68 until (i) at least ten years have elapsed from the date of the
69 initial revocation, during which time the revocation was
70 actually in effect, (ii) the offender has successfully
71 completed the program, (iii) all costs of the program and
72 administration have been paid, and (iv) all costs assessed as
73 a result of a revocation hearing have been paid.

74 (D) Notwithstanding any provision of this code or any
75 rule or regulation, the department of health, division of
76 alcohol and drug abuse, when certifying that a person has
77 successfully completed a safety and treatment program,
78 shall only have to certify that such person has successfully
79 completed the program.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Grace O. Williams
.....
Chairman Senate Committee

Floyd Filler
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

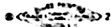
Leed C. Mills
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Dan Tomlin
.....
President of the Senate

Joseph P. Allright
.....
Speaker House of Delegates

The within *appeared* this the *26th*
March day of 1986.
Arva. Shaver, Jr.
.....
Governor



PRESENTED TO THE
GOVERNOR

Date 3/21/86

Time 5:16 p.m.

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1998 MAR 23 PM 9 02
SECRETARY OF STATE

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/26/86